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12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SHARIEF DEONA MCDOWELL,

18 Defendant.  
19  
20  
21  
22

ED CR No. 22-274-AB

UNITED STATES' RESPONSE TO  
PRESENTENCE REPORT AND SENTENCING  
POSITION FOR DEFENDANT SHARIEF  
DEONA MCDOWELL

[EXHIBITS 1-13 FILED CONCURRENTLY  
HEREWITH]

Hearing Date: June 30, 2023

Hearing Time: 1:30 p.m.

Location: Courtroom of Hon.  
André Birotte, Jr.

23 Plaintiff United States of America, by and through its counsel  
24 of record, the United States Attorney for the Central District of  
25 California, Assistant United States Attorney Cory L. Burleson, and  
26 Department of Justice Trial Attorney Lauren Archer, hereby files its  
27 response to the presentence report and its sentencing position for  
28 defendant Sharief Deona McDowell.

1 This sentencing position is based on the attached memorandum of  
2 points and authorities and Exhibits 1-13; the files and records in  
3 this case, including the United States Probation and Pretrial  
4 Services Office's Presentence Investigation Report and Recommendation  
5 Letter; and such further evidence and argument as the Court may  
6 permit.

7 Exhibits 6-13 are victim impact statements and are redacted to  
8 protect their privacy.

9 The United States respectfully requests the opportunity to  
10 supplement its position or respond to defendant or the Probation  
11 Office as may become necessary.

12 Dated: June 14, 2023

Respectfully submitted,

13 E. MARTIN ESTRADA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

From at least October 2018 through at least March 2022, Defendant Sharief Deona McDowell defrauded at least 28 investors of approximately \$2.6 million by falsely representing that she would invest their money in commodity futures and options contracts. In reality, defendant did not trade with the investors' money and instead stole the funds for her personal use.

On December 13, 2022, pursuant to the Plea Agreement in this case (Dkt. 7), defendant pleaded guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343. (Dkt. 26.) On January 30, 2023, the United States Pretrial Services and Probation Office ("Probation") issued its Presentence Report (Dkt. 28, "PSR") and Recommendation Letter (Dkt. 27, "RL"). The PSR calculated a total Guidelines offense level of 26 and a Criminal History Category of III, based on five criminal history points, resulting in a Guidelines range of 78-97 months' imprisonment. (RL at 2.)

The United States has no legal or factual objections to the PSR's calculation of defendant's criminal history. However, the United States, consistent with the terms of the Plea Agreement, objects to Probation's application of U.S.S.G. § 2B1.1(b)(2)(B) and, therefore, believes the appropriate total Guidelines offense level is 24. The United States asks the Court to apply a total offense level of 24, which results in a Guidelines range of 63-78 months.

The United States respectfully requests that the Court impose the following sentence: (1) 63 months' imprisonment, which is the low-end of the calculated Guidelines range; (2) three years of supervised release; (3) a \$100 mandatory special assessment; (4) that

1 defendant be ordered to pay \$2,446,093.96 in restitution to the  
2 victims of the offense; and (5) that all fines be waived.

3 Sixty-three months' imprisonment is just punishment because it  
4 reflects the seriousness of defendant's fraudulent conduct through  
5 which she personally benefitted millions of dollars while causing  
6 significant losses to individual investors. Furthermore, a custodial  
7 sentence at the low-end of the Guidelines range--and nothing less--is  
8 necessary to adequately deter defendant, who committed the instant  
9 offense in violation of a court order prohibiting her from engaging  
10 in this conduct.

## 11 **II. STATEMENT OF FACTS**

### 12 **A. Facts Defendant Admitted at Her Change of Plea Hearing**

13 At her December 13, 2022 change of plea hearing, defendant  
14 admitted that she knowingly, and with intent to defraud, devised,  
15 participated in, and executed a scheme to defraud investors and to  
16 obtain investors' money by means of materially false and fraudulent  
17 pretenses, representations, and promises. (PSR ¶ 12.)

18 As part of the fraudulent scheme, defendant started a purported  
19 investment company, Presidential Investments Inc LLC ("Presidential  
20 Investments") and knowingly solicited money from victims by falsely  
21 representing that she would use investors' money to purchase  
22 commodity futures and options contracts on their behalf. (PSR ¶ 14.)  
23 In fact, defendant misappropriated investors' money and used it to  
24 pay for personal expenses, to purchase gifts for third parties, and  
25 to make payments to other investors, which defendant falsely  
26 represented as disbursements from the recipients' own investment  
27 accounts. (PSR ¶ 14.)

28 To execute the scheme, defendant fabricated trade confirmations

1 and account statements, which she sent to investors via interstate  
2 wire communications, namely emails, to deceive the investors into  
3 thinking that she executed trades on their behalf and that their  
4 investments were generating returns. (PSR ¶ 15.) Defendant admitted  
5 that she intentionally defrauded at least 28 investors of  
6 approximately \$2,678,768.96. (PSR ¶ 18.)

7 Defendant committed the instant fraud in violation of a prior  
8 judicial order. (PSR ¶ 19.) Before establishing her own investment  
9 firm, defendant worked as a salesperson at the 20/20 Trading Company,  
10 which traded in precious metals. In 2011, the Commodities Futures  
11 Trading Commission ("CFTC") filed a civil action against 20/20  
12 Trading Company, defendant, and others, in the Central District of  
13 California, which resulted in defendant's consent to a \$10,000  
14 monetary penalty and a permanent injunction. (See Ex. 1.) The  
15 permanent injunction prohibited defendant from "directly or  
16 indirectly" engaging in conduct, "including, but not limited to,  
17 cheating, defrauding, or attempting to cheat or defraud, or deceiving  
18 or attempting to deceive any other person in connection with an offer  
19 to enter into, the entry into, the confirmation of the execution of,  
20 or the maintenance of, any commodity option transaction." (Id.  
21 ¶ 15.)

## 22 **B. Additional Facts**

23 Over the course of more than three years, defendant made dozens  
24 of material misrepresentations and false statements for the purpose  
25 of executing the fraud scheme in this case. (See, e.g., Exs. 6-10.)  
26 Defendant sent near-daily text messages to investors with information  
27 about trades she claimed to be making on their behalf. (Ex. 6 at 1;  
28 Ex. 7 at 1; Ex. 10 at 1.) Defendant even sent investors doctored

screenshots from Dillon Gage, the company she purportedly used to invest their money in gold and silver. (See Ex. 3 at 2.)

Defendant went to great lengths to prolong her scheme. Defendant used money provided by new investors to repay earlier investors--a tactic often used to conceal and prolong Ponzi and other investment fraud schemes. Defendant made false statements to investors who sought to withdraw money from their accounts, and she offered false explanations for payout delays. (Ex. 3 at 2; Ex. 4 at 2.) Defendant also attempted to avoid payouts by advising investors to roll their "gains" into new investments by buying more options or purchasing gold and silver. (Ex. 4 at 2; Ex. 5 at 2.)

### III. THE PRESENTENCE INVESTIGATION REPORT

On January 30, 2023, Probation issued its RL and disclosed the PSR to the parties. (Dkts. 27, 28.)

#### A. Offense Level

In the PSR, Probation concluded that the appropriate total offense level is 26. Probation's offense level calculation is as follows:

Base Offense Level:	7	[U.S.S.G. § 2B1.1(a)(1)]
Loss Amount between \$1.5M and \$3.5M:	+16	[U.S.S.G. § 2B1.1(b)(1)(I)]
Substantial Financial Hardship to 5 Victims:	+4	[U.S.S.G. § 2B1.1(b)(2)(B)]
Violation of Prior Injunction:	+2	[U.S.S.G. § 2B1.1(b)(9)]
Acceptance of Responsibility:	-3	[U.S.S.G. §§ 3E1.1(a), (b)]

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TOTAL: 26  
(PSR ¶¶ 32-51.)

#### B. Criminal History Category

In the PSR, Probation concluded that defendant has accumulated five criminal history points. (PSR ¶ 62.) Defendant has prior

1 criminal convictions and multiple revocations, resulting in three  
2 criminal history points. (PSR ¶ 60.) In addition, defendant  
3 committed the instant offense while on probation, before it expired  
4 on November 10, 2021; therefore, two points are added to her criminal  
5 history score under U.S.S.G. § 4A1.1(d). (PSR ¶ 61.) Accordingly,  
6 defendant is in Criminal History Category III. (PSR ¶ 62.)

7 **C. Probation's Recommended Sentence**

8 The Guidelines range for a total offense level of 26 with  
9 Criminal History Category III is 78 to 97 months. (PSR ¶ 109.)

10 In its RL, Probation recommends the following sentence: (1) 78  
11 months' imprisonment, which is the low end of Probation's calculated  
12 Guidelines range; (2) two years of supervised release; (3) a \$100  
13 mandatory special assessment; and (4) that all fines be waived. (RL  
14 at 1-2.)

15 **D. The United States' Position on the PSR and RL**

16 The United States concurs with the Criminal History Category  
17 computation set forth in the PSR. The United States objects to  
18 Probation's offense level calculation and its total offense level.

19 Specifically, the United States objects to the application of a  
20 4-level upward adjustment under U.S.S.G. § 2B1.1(b)(2)(B), as it  
21 differs from the parties' agreement in the Plea Agreement. In the  
22 Plea Agreement, the parties agreed that the 2-level upward adjustment  
23 under U.S.S.G. § 2B1.1(b)(2)(A) applied because defendant's conduct  
24 involved more than 10 victims. (Plea Agreement ¶ 12.) To provide  
25 defendant with the benefit of her bargain, the United States stands  
26 by its stipulation in the Plea Agreement and asks the Court to apply  
27 the 2-level upward adjustment under U.S.S.G. § 2B1.1(b)(2)(A), not  
28 the 4-level upward adjustment recommended by Probation. Thus, the

1 United States believes the appropriate total offense level is 24,  
2 which, with a Criminal History Category of III, results in a  
3 Guidelines range of 63-78 months.

4 As set forth in the following section, the United States  
5 believes that a custodial sentence at the low-end of the Guidelines  
6 range is appropriate (but with the low-end at 63 months), and that  
7 three years (rather than two years) of supervised release is  
8 warranted.

9 **IV. THE UNITED STATES' RECOMMENDED SENTENCE AND § 3553(a) ANALYSIS**

10 **A. Sixty-Three Months' Imprisonment Is Just Punishment**

11 The United States recommends the following sentence: (1) 63  
12 months' imprisonment, which is the low-end of the calculated  
13 Guidelines range; (2) three years of supervised release; (3) a \$100  
14 mandatory special assessment; (4) that defendant be ordered to pay  
15 \$2,446,093.96 in restitution to the victims of the offense; and  
16 (5) that all fines be waived.<sup>1</sup>

17 A 63-month custodial sentence is appropriate in light of the  
18 nature and seriousness of the offense and the history and  
19 characteristics of defendant. Such a sentence would be "sufficient,  
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21 <sup>1</sup> The discussion in this brief of how the § 3553(a) factors  
22 apply in this case is meant to support the United States' request for  
23 a sentence of 63 months' imprisonment, along with the other  
24 components of the sentence to be imposed. Nothing in this sentencing  
25 position should be construed as recommending or suggesting that a  
26 custodial sentence of more than 63 months is appropriate under the  
27 § 3553(a) factors. The United States anticipates that defendant will  
28 seek a variance below the Guidelines range because of defendant's  
history and characteristics, among other things. While there is  
mitigation present in defendant's history and characteristics, that  
mitigation has already been carefully incorporated into the United  
States' recommended sentence. Aggravating information discussed is  
intended only to highlight the appropriateness of the recommended 63-  
month sentence (along with the other components of the sentence to be  
imposed), and in so doing make clear that a lesser custodial sentence  
would not be appropriate in this case.



1 but not greater than necessary," to comply with the purposes  
2 enumerated in 18 U.S.C. § 3553(a)(2).

3 **B. Nature, Circumstances, and Seriousness of the Offense**

4 A 63-month sentence, at the low-end of the Guidelines range,  
5 necessarily reflects the nature, circumstances, and seriousness of  
6 the defendant's conduct.

7 First, defendant's conduct shows a brazen disregard for the law.  
8 From the very formation of her company, Presidential Investments,  
9 defendant intended to use it to commit fraud, after having been  
10 prohibited by a court order from doing precisely that. Aware of the  
11 injunction, defendant took steps to conceal her conduct by  
12 registering the business and opening bank accounts in the names of  
13 other people. (PSR ¶ 13.) The fact that defendant went through such  
14 steps shows the effort she was willing to go through to conceal her  
15 conduct and skirt the law. It also shows defendant never intended to  
16 operate a legitimate business. As further evidence of her intent,  
17 for the entire period that she operated Presidential Investments,  
18 defendant never engaged in any trading or other legitimate income-  
19 generating activities. Defendant misappropriated every investment  
20 that she received.

21 Second, defendant's conduct shows a brazen disregard for the  
22 harm she caused to the community. For more than three years,  
23 defendant lied and stole at the expense of innocent investors.  
24 Defendant recruited most of her victims through referrals. Although  
25 most victims never met her in person, defendant communicated with  
26 them directly through text messages and emails. Defendant told them  
27 she would invest their money, but instead, defendant stole the money.  
28 She purchased cars, trips, and gifts for herself and others, and

1 generally, lived off victims' savings. Defendant's scheme had a  
2 significant financial impact on many of her victims, some who trusted  
3 her with hundreds of thousands of dollars that they had saved for  
4 their retirement.

5 **C. Defendant's History and Characteristics**

6 In March 2022, defendant, through counsel, reported her crimes  
7 to the Federal Bureau of Investigation and CFTC. To be sure,  
8 defendant's confession substantially assisted in the investigation of  
9 this case. However, defendant's confession must be weighed against  
10 the fact that she is a recidivist, who knowingly committed the  
11 instant offense in direct violation of a prior judicial order. (See  
12 Ex. 1.)

13 Defendant reported to Probation that her usual occupation is a  
14 broker/analyst. (PSR ¶ 103.) At one time, defendant was a licensed  
15 broker. (See Ex. 2.) However, at all times relevant to the charged  
16 misconduct, defendant was not a licensed broker, investment advisor,  
17 or otherwise registered with the CFTC or NFA. (Id.) Defendant must  
18 be admonished, again, to cease from representing herself as a broker,  
19 or from representing to the public, in any way, that she is permitted  
20 to participate in trading activities, directly or indirectly, on  
21 behalf of others.

22 The recommended sentence of 63 months' imprisonment, at the low  
23 end of the Guidelines range, is necessary to adequately deter  
24 defendant and put an end to her criminal activity. A significant  
25 custodial sentence will also provide general deterrence and protect  
26 the public from future crimes by this defendant and others who would  
27 otherwise consider engaging in similar conduct.

1 **V. RESTITUTION**

2 The United States agrees with Probation's assessment that  
3 restitution is mandatory in this case under 18 U.S.C. § 3363A, and  
4 respectfully requests that the Court order defendant to pay  
5 restitution to the victims in the amount of \$2,446,093.96.<sup>2</sup> (PSR  
6 ¶ 119; RL at 1.)

7 **VI. THREE YEARS OF SUPERVISED RELEASE IS WARRANTED**

8 The United States believes that a 3-year term of supervised  
9 release is supported by the facts of this case and defendant's  
10 history and characteristics. Given the seriousness of the instant  
11 offense, defendant's criminal history, defendant's previous probation  
12 violations, and the other considerations stated above, a 3-year  
13 period of supervised release is necessary to provide defendant with  
14 oversight and supervision after her release from prison. See United  
15 States v. Johnson, 529 U.S. 53, 59 (2000) ("Congress intended  
16 supervised release to assist individuals in their transition to  
17 community life."); S. Rep. No. 98-225, at 124 (1983) (describing the  
18 "primary goal" of supervised release as providing "rehabilitation").  
19 Defendant's probation violations and the fact that she committed the  
20 instant offense in violation of a prior court order show that  
21 recidivism is a real concern. Three years of supervised release is  
22 warranted.

23 Moreover, in addition to the supervised release terms and  
24 conditions proposed by Probation (RL at 2-3), the United States  
25 requests that defendant be prohibited from conducting any investing  
26

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27  
28 <sup>2</sup> The intended loss is less than the actual loss for purposes of  
calculating restitution because defendant returned approximately  
\$200,000 to some investors using money received from other investors.

1 or trading on behalf of others during the period of supervised  
2 release. As noted above, and as defendant admitted to Probation,  
3 defendant is banned from trading with futures and options. (Ex. 1  
4 ¶ 15; PSR ¶ 29.) According to the letter defendant wrote to  
5 Probation, however, defendant does not believe she is banned from  
6 stocks or foreign exchanges, and thus, defendant plans to use a  
7 portion of her future income to trade stocks and foreign exchanges to  
8 generate funds to pay restitution. (PSR ¶ 29.) Given defendant's  
9 conduct in this case, prohibiting defendant from trading on behalf of  
10 others while on supervised release will hopefully prevent defendant  
11 from committing this conduct in the future, and it will give  
12 Probation the opportunity to monitor defendant's investment and  
13 trading activity.

#### 14 **VII. CONCLUSION**

15 For the foregoing reasons, the United States respectfully  
16 requests that the Court sentence defendant to a 63-month term of  
17 imprisonment followed by three years of supervised release, and that  
18 the Court order defendant to pay \$2,446,093.96 in restitution to the  
19 victims of the offense.